


# Administrative Office of the Courts

Chief Justice Christine M. Durham  
Utah Supreme Court  
Chair, Utah Judicial Council

Daniel J. Becker  
State Court Administrator  
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## MEMORANDUM

**To:** Julia D'Alesandro, Audit Department

**From:** Brent Johnson, General Counsel 

**Re:** Interest on Restitution

**Date:** August 28, 2003

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This memorandum is to confirm our conversation concerning the collection of interest on restitution. You have accurately summarized our conversation in your e-mail, but I wanted to specifically confirm and reduce this discussion to a memorandum for your future use.

Under the restitution statutes in the Utah Code (§ 77-38a-101 et. seq.) a court is required to impose restitution in criminal cases in which a defendant has suffered damages. The court orders two types of restitution: Complete restitution and court-ordered restitution. Complete restitution is the full amount necessary to make a victim whole. The court-ordered restitution is the amount that the defendant will pay as a part of the criminal case. For instance, a court may determine that a victim has suffered \$50,000.00 in damages as a result of a crime. The \$50,000.00 would be considered complete restitution. At the same time, the court may determine that the defendant should only pay \$10,000.00 of that amount as a part of the criminal case. The \$10,000.00 would be court-ordered restitution. The \$50,000.00 complete restitution is entered into the civil docket and the victim is entitled to collect that amount through civil procedures. The \$10,000.00 is entered as a part of the criminal sentence and the court can assist with the collection of that amount.

According to § 77-38a-401, the victim is entitled to the complete amount of damages, including interest. The court does not have the authority to waive the victim's right to collect those amounts. If a court does not wish to collect restitution on behalf of a victim, the court is not obligated to do so. However, the victim is nonetheless entitled to the principal plus interest, in all cases. If the court chooses, the court could determine that complete restitution is principal and interest, while court-ordered restitution will only be the principal. The court could adopt this as a

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general administrative order, which would then allow the clerk to docket principal and interest in the civil docket, but only principal in the criminal docket. The victim would then be free to collect interest through the appropriate civil procedures, while the principal is collected through the criminal proceeding. I have no opinion on whether this is ultimately a desirable result, but it is certainly legal for a court to do such.

Please let me know if you have any additional questions about this.